



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

TO: VICTORIA P. SIMMONS
Regulatory Coordinator
Department of Medical Assistance Services

FROM: PAIGE S. FITZGERALD
Special Counsel to DMAS

DATE: September 30, 2003

SUBJECT: Proposed Regulations concerning Adult Specialized Care Services

I have reviewed the attached proposed regulations that discontinue the Department's additional reimbursement for adult specialized care services in accordance with the General Assembly's mandate.

Based on that review, it is my view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these amendments to the State Plan, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. These regulations will enable the Director, in lieu of the Board of Medical Assistance Services, to make permanent the regulations concerning the discontinuance of DMAS's additional reimbursement for adult specialized care services. These changes were originally made by the promulgation of emergency regulations, and were approved by this Office in a memorandum dated June 12, 2003.

The authority for both the previously promulgated emergency regulations and these proposed regulations derives from this year's Appropriation Act (Chapter 1042 of the 2003 Acts of Assembly, Item 325(LL)), which states that: "The Department of Medical Assistance Services shall amend its State Plan for Medical Assistance governing Medicaid reimbursement for nursing facilities to eliminate coverage of rehabilitation services and complex care services from the Specialized Care program, except for pediatric Specialized Care and except for specialized Traumatic Brain Injury Units. The Department shall amend the ventilator services component of the Specialized Care program to include individuals who have a tracheostomy and who meet certain additional criteria. The Department shall clarify that continuous positive airway pressure and bilevel positive airway pressure, except for pediatric specialized care, are not included in ventilator services for Specialized Care."

Victoria P. Simmons
September 30, 2003
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If you have any questions or need any additional information, please feel free to call me at 786-3450.

cc: Siran S. Faulders, Esquire

Attachment